IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1002 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

M V VADERA

Appearance:

1. Special Civil Application No. 1002 of 1994

MR HS MUNSHAW for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Brahmbhatt for the respondent

workman. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the award made by the Labour Court, Godhra in Reference No. 88 of 1986 dated 24.9.1992 wherein the labour court has granted reinstatement with continuity of service without back wages for the intervening period.

This petition was admitted by this court by issuing rule thereon on 24.9.1994 and while admitting this petition, ad.interim relief in terms of para 7(B), except reinstatement has also been granted by this Court and it has been directed by this court that it will be open for the petitioner to post the delinquent at the place where there can be no public dealing. In view of this order passed by this court, the respondent has been reinstated in service as part time T.C. and at present he is working with the petitioner as per the statement made by Mr. Brahmbhatt, learned advocate for the petitioner. The statement made by Mr. Brahmbhatt has not been disputed by Mr. Munshaw, learned advocate for the petitioner.

During the course of hearing, learned advocate Mr. Munshaw appearing for the petitioner has submitted that the respondent has committed an act of dishonesty and misappropriation of the funds of the corporation while working as part time T.C. in recovering the amount from the party and issuing the receipt but the said amount has not been deposited by the respondent with the corporation. This was repeated act of dishonesty and misappropriation and, therefore, he was served with the chargesheet and thereafter, after holding inquiry, was dismissed from service. Thereafter, he raised industrial dispute and the matter was referred for adjudication by the appropriate authority to the labour court Godhra. He has submitted that before the labour court, legality, validity and propriety of the departmental inquiry as well as the findings recorded therein were not challenged by the respondent workman and, therefore, the charge levelled against the workman has been found to have been proved and, thereafter, the labour court has examined the question of punishment. He has submitted that the punishment imposed by the corporation was quite just and proper and, therefore, the labour court ought not to have interfered with the punishment imposed by the petitioner.

Learned advocate Mr. Munshaw has also submitted that the labour court has observed in the award that some punishment is required to be imposed upon the respondent. However, ultimately, no such punishment has been imposed by the labour court while setting aside the punishment of dismissal from service. According to his submission, denial of back wages for the intervening period cannot be

considered as a punishment and some punishment ought to have been imposed by the labour court.

Learned advocate Mr. Brahmbhatt appearing for the workman has submitted that the labour court, while exercising the powers under sec. 11-A of the Industrial Disputes Act, 1947, has found that the punishment of dismissal was disproportionate and, therefore, in exercise of such powers, has set aside the order of dismissal and has ordered for his reinstatement with continuity of service, without back wages. According to him, the respondent workman is not required to perform the work as part time T.C. in parcel booking but this work was being taken by the petitioner as an additional work from the respondent workman and there was no any order in writing issued by the corporation and without issuing any such order in writing, such work was being taken by the corporation and, therefore, since the respondent was not having experience of such work, such mistake has been committed by the respondent. He has submitted that even before the inquiry officer also, the respondent has very fairly submitted that now, he will take care in future while working in parcel office and he will now not commit any such mistake in future. He submitted that it was also urged by the respondent before the disciplinary authority for pardoning for such lapse on his part because he is having responsibility of maintaining his family. However, without considering his explanation, severe punishment of dismissal from service has been imposed upon the respondent and, therefore, the tribunal in exercise of the powers under sec. 11A of the Act, has set aside the order of punishment of dismissal from service without back wages for the intervening period and, therefore, this court should not interfere with such award of reinstatement.

As regards the submissions of Mr. Munshaw that some punishment ought to have been imposed by the labour court while setting aside the punishment of dismissal from service and granting reinstatement without back wages, Mr. Brahmbhatt has submitted that the award in question does not require any interference by this court. However, he has ultimately left it at the discretion of this Court and has submitted that this court may impose some reasonable punishment keeping in view the facts and circumstances of the case.

I have considered the submissions made by the learned advocates for the parties. I have also considered the award in question. Upon perusal of the award in question, it can be seen that the labour court, in exercise of the powers under section 11A of the

Industrial Disputes Act, 1947, found that the punishment of dismissal from service was harsh. The labour court also found that there was no any intention on the part of the workman for committing any act of dishonesty and/or misappropriation of the funds of the Corporation but the workman was doing the work of parcel booking without any orders and without issuing any order for such work, such work was being taken from him. The labour court was of the view that since there was no any such intention for committing act of dishonesty, the punishment of dismissal cannot be sustained. The labour court has, therefore, in exercise of such powers, set aside the order of dismissal and has granted reinstatement with continuity of service but without back wages. The award made by the labour court does not suffer from any vice of jurisdictional error and/or material error. However, upon perusal of the award in question, it could be seen that the labour court has observed that some punishment is required to be imposed. However, ultimately, while setting aside the punishment of dismissal from service, the labour court has not imposed any other punishment upon the respondent workman. In the facts and circumstances of the case, according to my opinion, some punishment ought to have been imposed upon the respondent while ordering for his reinstatement without back wages. According to my opinion, in the facts and circumstances of the case, if three annual increments of the respondent workman are ordered to be stopped with cumulative effect, same would met ends of justice and would always remind the respondent of his lapse committed in past. Therefore, in the facts and circumstances of the case, following order is passed.

This petition is partly allowed. Award in question made by the labour court Godhra in Reference No. 88 of 1991 dated 24th September, 1992 is confirmed and further, it is ordered to the petitioner corporation to stop the punishment of stoppage of three annual increments of the respondent workman with future effect. To that extent, the award in question is modified by this Court. It is hereby clarified that the award of reinstatement with continuity of service without back wages has not been disturbed by this court.

Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

Dt. 7.3.2002. (H.K. Rathod,J.)

Vyas